

**STATEMENT
OF
SENATOR DANIEL K. INOUE
CHAIRMAN
COMMITTEE ON INDIAN AFFAIRS
BEFORE THE
FEBRUARY 7, 2002
HEARING
ON
LEGISLATIVE PROPOSALS
ADDRESSING THE
STATUTE OF LIMITATIONS
ON
TRIBAL GOVERNMENT CLAIMS AGAINST THE UNITED STATES
RELATED TO THE
MANAGEMENT OF INDIAN TRIBAL TRUST FUNDS**

The Committee meets this morning to receive testimony on legislative proposals addressing the statute of limitation on the claims of Tribal Governments against the United States related to the management of Indian tribal trust funds.

Over the course of the last year or more, the Committee has received various proposals from representatives of Tribal Governments that are concerned with the very real possibility that the United States might assert that reports submitted to the Tribes whose trust funds are held by the Federal government constituted notice sufficient to commence the running of the statute of limitations against tribal claims.

One such proposal was introduced in the Senate in the closing days of the First Session of this 107th Congress by the Vice Chairman of the Committee, Senator Campbell.

I served as a co-sponsor of that measure.

For those that may not be familiar with the background for such claims, I will take a moment here to review some of the more recent history.

As a function of treaties and the course of dealings between the United States and Indian tribes, the United States holds legal title to lands held in trust for individual Indians as well as Indian Tribal Governments.

The revenues derived from trust lands are also held in trust by the United States for the benefit of individual Indians and Tribal Governments.

Currently the Department of the Interior maintains approximately 1,400 accounts for 315 Indian Tribes with assets in excess of \$2.6 billion, and over 260,000 individual Indian Money Trust Fund Accounts with a balance of \$400 million as of September 30,2000.

Receipts are deposited to these accounts primarily from land use agreements, royalties on natural resource depletion, enterprises related to trust resources, judgment awards, settlement of Indian claims, and investment income.

However, an independent audit of the trust funds for fiscal year 2000 noted that reliance cannot be placed on the balances reflected in the trust funds accounts until many tribal accounts are reconciled

and/or resolved through negotiation and settlement or until a now-pending class action lawsuit that has been brought on behalf of the individual Indian money account holders is resolved.

The Congress first established an Indian trust fund account reconciliation requirement in the supplemental appropriations act of 1987 in response to tribal concerns that the Interior Department had not consistently provided them with statements on their account balances, that their trust fund accounts had never been reconciled, and that the Department planned to contract with a third party for the management of trust fund accounts.

The original provision required that the accounts be audited and reconciled before the department transferred the responsibility for managing the trust funds to a third party. From 1990 to 1995, provisions in the appropriations acts for the Department of the Interior added a requirement that the accounts be reconciled to the earliest possible date and that the Department obtain an independent certification of the reconciliation work.

In 1994, the Congress required the Interior Secretary to provide Tribes with reconciled account statements as of September 30, 1995 in the American Indian Trust Fund Management Reform Act (Public Law 103-412).

And from fiscal years 1992 through 2001, the appropriations acts for the Department have included an additional provision which requires that tribal and individual Indian money account holders be furnished with an accounting “from which the beneficiary can determine whether there has been a

loss...”.

Recognizing that it would be unfair to allow the statute of limitations to run on claims until each account holder was provided with an accounting, since fiscal year 1991, the Congress has included in the Department of the Interior’s appropriations acts a provision that tolls the statute of limitations on tribal and individual Indian claims against the United States arising out of the Department’s management of tribal and individual Indian trust funds.

A similar provision is contained in the President’s budget request for fiscal year 2003.

Beginning in 1992, the Interior Department did undertake work to provide for a reconciliation of tribal trust fund accounts, and at least initially, to examine whether individual Indian money trust accounts could also be reconciled.

This work was accomplished through contractors, primarily the Arthur Andersen firm, and the Congress appropriated over 20 million dollars so that this important work of reconciling trust fund accounts could proceed.

The congress also called upon the General Accounting Office to oversee the reconciliation process.

Following the reconciliation work performed by the contractors and supplemented by

additional work on the part of the Interior Department, reports were issued to each Tribal Government for whom the United States holds funds in trust.

It is these reports that are at issue – because it is alleged that the reports constitute notice sufficient to commence the statute of limitations running on any claims that Tribal Governments may have against the United States relating to the government’s management of tribal trust funds.

In May of 1996, the General Accounting Office issued a report on the reconciliation process, concluding that, and I quote:

“Interior’s reporting of the reconciliation project results was not as complete as it could have been. Interior did not disclose in the report packages to Tribes the procedures specified in the reconciliation contract that were not performed, or those that could not be completed, and the reasons. For the procedures that were performed, Interior did not fully disclose scope limitations or changes in methodologies, such as accounts and time periods that were not covered and alternative source documents used.”

Thus, as we will hear today, the reconciliation process did not accomplish the primary objective it sought to achieve – namely, to assure the affected Tribal Governments that the balances in the trust fund accounts were balances upon which they could rely.

It has now been six years since many of the Tribal Governments received the results of the

reconciliation process.

Faced with an assertion that the receipt of these reports commenced the running of the statute of limitations, most prudent Tribal Governments would take action to preserve their claims against the United States by filing legal actions before the statute of limitations has run.

These actions, if filed, and across Indian Country, many have been filed, hold the potential for a multitude of adjudications by different courts with varying and likely inconsistent results, as well as exposing the United States to unlimited liability.

And so we are here today to explore whether there is the will and a way for well-intentioned people to come together and agree on a legislative proposal that will address the statute of limitations on tribal claims and thereby enable the parties to pursue some other path for the resolution of these claims.